

Atty. Dkt. No. 028622-0108
Appln. No. 09/890,339

DRAFT

REMARKS

I. Introduction

Applicants respectfully request reconsideration of the present application in view of the foregoing amendments and in view of the reasons that follow.

Claims 1-26, 27-43, 46-47, and 58-62 are requested to be cancelled. The cancellation of claims does not constitute acquiescence in the propriety of any rejection set forth by the Examiner. Applicants reserve the right to pursue the subject matter of the canceled claims in subsequent divisional applications.

Claims 44, 48, 50-52, 54-57, 63-64, and 66-67 are currently amended.

This amendment adds, changes and/or deletes claims in this application. A detailed listing of all claims that are, or were, in the application, irrespective of whether the claims remain under examination in the application, is presented, with an appropriate defined status identifier.

Upon entry of this Amendment, claims 44-45, 48-57, and 63-68 will remain pending in the application.

Because the foregoing amendments do not introduce new matter, entry thereof by the Examiner is respectfully requested.

Applicants submits that each of these amendments either conforms with claim formalities and/or presents the claims in better form and, therefore, entry under the provisions of 37 C.F.R. §1.116(b) is proper. Entry of these amendments is requested.

Applicants thank the Examiner for the Advisory Action outlining the remaining issues. Applicants believe the above amendments remove the remaining issues cited by the Examiner and place the claims in condition for allowance.

Atty. Dkt. No. 028622-0108
Appln. No. 09/890,339

DRAFT

II. Response to Issues Raised by Examiner in Outstanding Office Action

a. New Issues Raised by Examiner

The Examiner has noted the presence of a comma and period in claim 44. Advisory Action, point 2. Applicants have removed the period. In addition, the Examiner has noted the use of the term *Mycobacterium* which lacks antecedent basis in claim 57. Applicants have amended this claim to now recite *M. tuberculosis*. Applicants request reconsideration and withdrawal of these objections.

b. Claim Rejections - 35 U.S.C. § 112, Second Paragraph

Claims 51 and 57 would remain rejected by the Examiner under 35 U.S.C. § 112, second paragraph as being allegedly indefinite. See Advisory Action, point 11. The Examiner asserts that the above claims are drawn to the genus *Mycobacterium* and are, therefore, indefinite. Applicants have amended the claims and the claims are now drawn to *M. tuberculosis*. Applicants believe this amendment resolves the indefiniteness issue and respectfully request reconsideration and withdrawal of the rejection.

c. Claim Rejections - 35 U.S.C. § 112, First Paragraph

Claims 49, 51, 52, 54, 65, and 68 would remain rejected by the Examiner under 35 U.S.C. § 112, first paragraph for lack of enablement. The Examiner asserts that Prof. Kaufman's declaration is not persuasive for fragments of Rv3407 and Rv0068. See Advisory Action, point 10. In order to expedite prosecution, and without conceding the merits of the Examiner's rejection, Applicants have amended the claims to remove language regarding fragments. In light of these amendments, Applicants respectfully request reconsideration and withdrawal of the rejection.

Atty. Dkt. No. 028622-0108
Appln. No. 09/890,339

DRAFT

CONCLUSION

The present application is now in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested.

It is acknowledged that the foregoing amendments are submitted after final rejection. However, because the amendments do not introduce new matter or raise new issues, and because the amendments either place the application in condition for allowance or at least in better condition for appeal, entry thereof by the Examiner is respectfully requested.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant(s) hereby petition(s) for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 19-0741.

Respectfully submitted,

Date _____

By _____

FOLEY & LARDNER LLP
Customer Number: 22428
Telephone: (202) 672-5483
Facsimile: (202) 672-5399

Richard C. Peet
Attorney for Applicant
Registration 35,792